

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LISA R. RESPRESS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION 05-0141-M
	:	
JO ANNE B. BARNHART,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER

In this action under 42 U.S.C. §§ 405(g) and 1383(c)(3), Plaintiff seeks judicial review of an adverse social security ruling which denied claims for disability insurance benefits and Supplemental Security Income. The parties filed written consent and this action has been referred to the undersigned Magistrate Judge to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73 (see Doc. 17).

Defendant has filed a Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Remand of the Cause to the Defendant (Doc. 15). Defendant has stated that Plaintiff's attorney has no objection to the motion (Doc. 15, p. 2).

Defendant states that

[o]n remand by the Court, the Appeals Council will vacate the July 2003 administrative decision and remand the case to an administrative law judge [hereinafter

ALJ] with instructions to further address the opinion of the State agency psychologist and reconsider Plaintiff's mental residual functional capacity. The ALJ will also be instructed to develop the mental requirements of the Plaintiff's past relevant work as a cashier and to reconsider whether she can perform this work in light of her mental residual functional capacity. If Plaintiff cannot perform her past relevant work, the Administrative Law Judge will obtain vocational evidence to determine the impact of her nonexertional limitations on her ability to perform other work.

(Doc. 15, pp. 1-2). This is a tacit admission that Plaintiff's application was not appropriately considered and that this action should be reversed. Without reviewing the substantive evidence of record, this Court accepts Defendant's acknowledgment of error.

It appears to the Court that the decision of the Secretary should be reversed and remanded. Such remand comes under sentence four of 42 U.S.C. § 405(g). See *Melkonyan v. Sullivan*, 501 U.S. 89 (1991). For further procedures not inconsistent with this report, see *Shalala v. Schaefer*, 509 U.S. 292 (1993).

Therefore, it is **ORDERED**, without objection from Plaintiff, that Defendant's Motion to Remand under sentence four be **GRANTED** (Doc. 11) and that this action be **REVERSED** and **REMANDED** to the Social Security Administration for further

administrative proceedings not inconsistent with the orders of this Court. Judgment will be entered by separate order.

DONE this 11th day of October, 2005.

s/BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE